

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SALINAS CITY ELEMENTARY SCHOOL
DISTRICT, MONTEREY COUNTY
OFFICE OF EDUCATION & SANTA
RITA UNION SCHOOL DISTRICT.

OAH CASE NO. 2013071259

ORDER DENYING MOTION TO
DISMISS AND DENYING MOTION
TO BIFURCATE WITHOUT
PREJUDICE

On July 26, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint), naming the Salinas City Elementary School District (Salinas) and the Monterey County Office of Education (MCOE) as respondents. On September 11, 2013, OAH granted Student leave to amend the complaint (amended complaint) in which Student added Santa Rita Union School (Santa Rita) District as a respondent. The amended complaint alleges two issues with subparts. Issue One alleges that Salinas and MCOE deprived Student of a free appropriate public education (FAPE) during the 2011-2012 regular school year and the 2012 extended school year (ESY). Issue Two alleges that all respondents deprived Student of a FAPE during school years 2012-2013, 2013-2014 and the 2013 ESY.

On October 14, 2013, Santa Rita filed a motion to dismiss or alternatively a motion to bifurcate, contending that Student failed to establish residency within Santa Rita's district during the applicable time periods. Santa Rita's motion is supported by a declaration under penalty of perjury from a District employee, and exhibits. Student filed an opposition. For the reasons discussed below, Santa Rita's motions are denied.

Motion to Dismiss

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, Santa Rita's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, and in particular residency. The issue of residency requires factual findings to be made by an administrative law judge at hearing and is not appropriate for a motion to dismiss. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

Motion to Bifurcate

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Here, Student's complaint, as it pertains to Santa Rita, alleges that Student resided with his mother within the boundaries of Santa Rita from August 2012 until February 2013. Santa Rita disputes residence. For that reason, Santa Rita seeks bifurcation in order to avoid having to participate in this case. Residency is a factual issue requiring evidentiary findings by the hearing judge. Santa Rita has not demonstrated that holding separate hearings would be conducive to expedition and economy, or that Santa Rita would suffer prejudice by presenting its evidence on residency before the administrative law judge at the time of the scheduled hearing.

Accordingly, Santa Rita's motion to bifurcate is denied, without prejudice to Santa Rita's right to renew its motion to bifurcate at the prehearing conference prior to the due process hearing.

IT IS SO ORDERED.

Dated: October 21, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings